

Terms and Conditions
BRAZIL BAROQUE, INC. 2008

TERMS AND CONDITIONS

- 1. Scope:** The following terms and conditions apply to the sale of all Products (“Product”) sold or distributed by Brazil Baroque, Inc. (“Brazil”) to a customer (“BUYER”).
- 2. Prices:** The prices for Product are set forth in Brazil’s quotation, which can be changed at any time before acceptance by Brazil of BUYER’S. The quoted prices are exclusive of all taxes, freight, duties, or other applicable charges.
- 3. Payments:** Invoices are due and payable upon receipt and prior to shipping merchandise. Interest shall accrue at the rate of one and one half percent (1.5%) per month on any invoice balance unpaid after 30 days.
- 4. FOB Point:** All Products shall be delivered F.O.B. Brazil’s warehouse in Los Angeles, CA, USA. BUYER shall be responsible for all transportation, insurance, duties and other applicable expenses. If prepaid by Brazil under prior agreement, all such applicable expenses and fees shall be added to Brazil’s invoice to BUYER.
- 5. Title and Risk of Loss:** Title and risk of loss or damage to the Product shall pass to BUYER upon delivery of Product by Brazil to the common carrier. BUYER hereby grants Brazil a security interest in the Product until the invoice covering the Product has been paid in full. Brazil shall bear the risk of loss or damage until the Product is delivered to any common carrier.
- 6. Force Majeure:** Brazil shall not be liable for any failure to perform or other loss due to unforeseen circumstances or causes beyond its control, including without limitation acts of God, strikes, material or transportation shortages, or acts of the United States Government in its sovereign capacity.
- 7. Limited Warranty:** Brazil warrants that all Products will be free from defects in materials and workmanship, subject to the terms of Brazil’s standard Limited Warranty. As Brazil designs, manufactures, and imports unique furniture made in Brazil from rare Brazilian hardwoods, wood species may vary from piece to piece and no exact wood species can be or is guaranteed or warranted by Brazil. Due to their unique nature, polychromatic colors, wood stains, motifs, and leather may vary from piece to piece and therefore no exact color can be or is guaranteed or warranted. Brazil’s maximum total liability in connection with the sale of the Product for damages and expenses arising from any default or defaults, breach or breaches of warranty or failure to deliver Product in conformance with the BUYER’s order (regardless of the form of action, whether in contract or in tort) shall not exceed BUYER’s actual damages or the price actually paid to Brazil for the particular products involved in the occurrence giving rise to such liability, whichever is less. In no event shall BUYER, its successors or assigns, commence any action against Brazil arising out of the sale, delivery or use of Product, and regardless of the form of the action, later than one (1) year after the Product has been delivered to BUYER. THE WARRANTIES PROVIDED FOR IN THIS PROVISION AND THE OBLIGATIONS AND LIABILITIES OF BRAZIL SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF, AND BUYER HEREBY WAIVES ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER REMEDIES AND LIABILITIES.
- 8. Confidentiality:** Many aspects of the design, production and operation of the Product, in any form, are proprietary information and trade secrets of Brazil. BUYER shall not, directly or indirectly, disclose copy or otherwise transfer such information and trade secrets to any third party at any time. BUYER shall not modify or reverse engineer any Product or parts thereof.
- 9. Property Rights:** Brazil shall own and have exclusive right to all patents trademarks, service marks, copyrights, trade secrets and all other intellectual property rights regarding the Products.
- 10. Waiver:** A waiver by Brazil of any default by BUYER of any of these Terms and Conditions shall not be deemed a continuing waiver of the breach of the same or other Terms and Conditions.
- 11. Indemnity:** BUYER shall indemnify, defend and hold Brazil harmless from all claims, actual and consequential damages, and other expenses, including without limitation attorney’s fees and costs incurred that in any way arise out of BUYER’s possession, handling, use or other application of the Product.
- 12. Termination:** BUYER shall not terminate any order after given to Brazil without Brazil’s prior written consent. In the event Brazil agrees to terminate any unshipped portion of an order, such agreement is subject to the condition that BUYER pays to Brazil the sum of (1) the price of all Product previously delivered (and which remain unpaid as of the termination date) and that were scheduled to be delivered within thirty (30) days from the date of termination agreement, and (2) a cancellation/restocking fee of 50% of the total order value prior to termination.
- 13. Attorney’s Fees:** In the event a dispute arises regarding these Terms and Conditions, or if Brazil commences an action to recover monies unpaid and owed by BUYER, the prevailing party shall be entitled to actual attorney’s fees and costs incurred, whether or not a lawsuit or other proceeding is filed.
- 14. Agreement:** BUYER agrees to these Terms and Conditions by placing its purchase order for the Product. These Terms and Conditions are the sole and entire agreement between the parties and shall supersede and control over any conflicting or contrary terms in any purchase order or other document, and shall be enforced according to the laws of the State of California. BUYER irrevocably submits to the jurisdiction of the state and/or federal courts in Santa Barbara County, California for any action or proceeding regarding these Terms and Conditions. This agreement cannot be modified except in writing signed by Brazil and BUYER.